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Washington, D.C. 20530

MAY 11 1981

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MEMORANDUM FOR ADMIRAL B. R. INMAN  
IG/I for E.O. 12036

Re: Comments Concerning May 4 Proposal for  
Revision of Executive Order 12036

DOJ

This memorandum responds to your request at the recent IG/I meeting for written comments concerning Director Casey's May 4 proposal for a revision of Executive Order 12036. The views presented are those of the Department of Justice, the Federal Bureau of Investigation and, as regards section 4-104, the Drug Enforcement Administration.

Section 1 - Since the question of NSC committee structure is not being considered in connection with the E.O. 12036 revision, the Attorney General has provided comments directly to the White House on this subject.

Sections 1-301(i) and (j) - These proposed new subsections raise issues we would prefer to see addressed in the context of revising E.O. 12065, which governs the identification and use of national security information. These proposals would extend the DCI's authority into the internal affairs of other agencies where no such authority now exists. Some might infer also that the DCI will establish a program to conduct "leak" investigations within the United States. Except within CIA and in the areas of Sensitive Compartmented Information where the DCI's authority to establish standards has long been recognized, the DCI should fulfill the role of a security expert and adviser to other agencies. We would propose the following substitute provisions:

[The DCI shall:]

- (i) Ensure, through the provision of appropriate guidance and assistance, the development by other departments and agencies of common basic security and access standards to protect foreign intelligence information and products;

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- (j) Ensure, through the provision of policies, guidance and assistance, that other departments and agencies protect intelligence sources and methods from unauthorized disclosure, and use lawful means to protect against such disclosures by present and former CIA employees and contractors.

Section 1-509 - The standard for reporting questions of legality to the IOC should not be limited to "serious" questions. DoJ originally raised this reporting standard for discussion purposes. That discussion showed that the responsible officials are comfortable with the existing standard and have not felt compelled to report trivial legal matters. Given this situation, a change here and in other related sections would stir needless controversy. We do not object to a limit on reporting questions of propriety to "serious" questions.

Section 2-208(c) - A question was raised at the IG/I meeting regarding the need for a change in this provision, since CIA no longer seeks expanded authority for operations within the United States. At the meeting we expressed concern that reverting to the language currently included in section 2-208(c) of E.O. 12036 might adversely affect the FBI. We have since determined that this is not the case. Accordingly, we agree with CIA's suggestion that no change be made in the current wording of this section in E.O. 12036.

Section 2-307 - We suggested that the words "carry out" in the proposed revision should be replaced by "participate in" if any change in the current 2-307 is believed necessary.

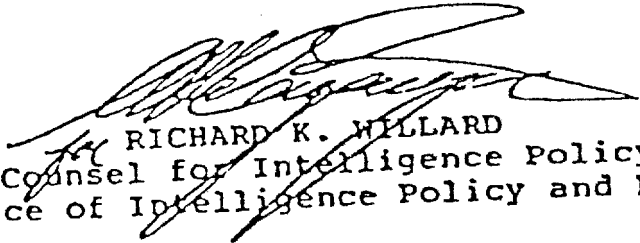
Section 4-104 - We agree with CIA that DEA's rare contacts with foreign intelligence or security services must be coordinated with the DCI. However, DEA feels that the explicit language in the proposed last sentence of this section would cause needless prejudice to its activities abroad. One way to solve this problem would be to strike the last sentence and add "and coordination policies" at the end of the first sentence. However, we believe agreement can best be facilitated by a meeting between representatives of the CIA's DDO and the DEA to discuss these specific concerns.

Section 4-2 - We continue to agree with the FBI that a definition of "coordination" that reflects current practice should be added to the Order to make clear the meaning of that term as used in revised sections 1-601, -605, -904, -1004, -1201 and -1202. It should be noted that the definition that has been proposed by the FBI does not preclude appeals to higher

authorities and is the same definition used in existing coordination agreements between the FBI and CIA and DoD. Further, two of the provisions affected (1-1201, -1202) impose a coordination requirement on the FBI, which is willing to assume the burden of the definition it proposes that other agencies follow. Also, three of the provisions (1-601, -605 and -904) require that such coordination be conducted in accordance with procedures, and this definition is or will be used in those procedures. Thus, the only effect of this definition, in addition to recognizing its conceptual validity, is to extend it to section 1-1004 relating to the intelligence activities of the military services abroad and in the U.S. In practice, this definition of "coordination" is now applied to those activities in the U.S. Thus, adding the definition will not represent any substantial change in practice but will add an element of clarity to the executive order.

Section 4-212 - We agree with the State Department that this definition could be clarified. However, it is possible that non-substantive changes will raise needless controversy. If a change must be made, we believe the revision proposed by State may be expressed even more clearly as follows:

Special activities means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but does not include activities intended to influence U.S. public opinion or policies, diplomatic activities, or the collection and production of intelligence and related support functions.

  
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 Office of Intelligence Policy and Review